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REMARKABLE TRIALS. — No. VII.

MURDER — CASE OF MOSES CHAPMAN ELLIOT.

The trial of Moses Chapman Elliot, before the supreme judicial court of Massachusetts, at Springfield, in the county of Hampden, September 17, 1834, for the murder of Josiah Buckland, excited a degree of interest which has scarcely a parallel in the judicial proceedings of Massachusetts.

The prisoner was a lad of only twelve years of age. The deceased was three months short of thirteen years when he died. They were both children of very respectable parents, living in that village; and the sympathy of the community, strongly excited by the developments of the case, which, for five months, had been the constant theme of village conversation, unfortunately, though almost unavoidably, took sides with one or the other suffering families.

Most of the material facts were ascertained beyond contradiction or doubt. The two children were companions and playmates. On the 4th of April they slept in the same bed. On the morning of the 5th, they went out together, with a pistol belonging to Elliot, Buckland for some purpose taking a bundle of clothes with him, and having a quarter of a dollar, which was all the money they possessed. For an hour they amused themselves by firing at a mark, near the house where the deceased lived. They then went off together in the direction of a building called a hop-house, situated in an open field, at considerable distance from any habitation or public road. There they

resumed their amusement, by firing at least nine bullets at the door of the hop-house. The firing was heard till about twelve o'clock, at noon, by a witness who was at work at some distance in the field, and who soon after saw a boy, of the appearance of the prisoner, running from the direction of the hop-house, alone. Young Buckland there received a mortal wound by a pistol bullet, which entered on the left side of the breast, an inch below the left pap, passed through both lobes of the lungs, and came out at the back, near the spine, two inches higher than the point at which it entered the body, carrying with it into the breast shreds of the garment worn by the deceased. The wound was not immediately fatal. The lad was found, the next morning, (Sunday) under a hedge, near some water, to which he had crawled during the night, to slake that burning thirst which always attends an injury of this description. He was taken to his parents' house, where he languished until the Thursday following, when he died.

It being perfectly certain that the wound was given by the prisoner, the only question in the case was, whether it was the result of accident or design. To this point the dying declaration of the deceased, made to his mother, and by her repeated in evidence, was adduced by the Attorney General, and heard by a crowded auditory, composed, in a great proportion, of ladies, with the most thrilling emotion.

Mrs. Elizabeth Buckland testified, that after her son was brought home, his wound was examined and dressed by the surgeons; and after the exhaustion consequent upon this painful operation had been somewhat relieved, he attended to the exhortations and instruction of the Rev. Dr. Osgood; and when all was still, and she was alone with him, and while his head lay upon her bosom, and she had given him a parting kiss, and told him he must die, she begged him to let her know how it happened, from beginning to end, declaring to him that it would be the only consolation she should have, to hear the entire truth. She said Josiah was then perfectly in possession of his reason; that he was calm and collected, and that slowly, but distinctly, he gave her the following account:

That Moses and he had agreed to go to Boston, to seek their fortune. That Moses told him they could easily get there, and find employment on board a ship. That he had packed up his clothes, but Moses came without any. That they were irresolute and undetermined how to proceed; that Moses had a pistol, and he (Josiah) got some powder and ball at his father's, and they practised some time at a mark near the house. They then went into the field, and began again the same sport. Moses loaded the pistol and told Josiah to fire it. He did, but it was loaded so heavily that it knocked him down. That Moses then told him that they must divide the clothes. Josiah consented; but Moses wanted the best coat, which Josiah refused to let him have. Words ensued, and, instead of going off, they recommenced firing. Moses told him to put up a mud mark on

the hop-house, and, while he was doing so, fired and nearly struck him. Josiah said he would go home if he did so again, but Moses laughed at him, and said he should not go home. Moses then again loaded the pistol, and threw the ramrod from him, and told Josiah to pick it up; while he was so doing, Moses fired, and the ball entered his body. Moses then came up and asked if he had killed him? Josiah replied, "I don't know;" and Moses then struck him with the pistol on his arm. He then took out of Josiah's pocket a twenty-five cent piece, and said — "I may as well have this as any body else." Josiah asked him to help him home, but he refused; he begged him to tell his mother what had happened, but he made no reply; threw down the pistol and ran off. Josiah said he felt as if he could not live, and all he wanted was to see his mother; that in the course of the night he crawled to the water, and lapped up some to quench his thirst. He was sorry for his fault in running away; had prayed to God to forgive him, and since he heard what Dr. Osgood said, he felt he would forgive him. He hoped his mother would forgive him, for he was very sorry for his fault.

Other witnesses testified to other conversations, after this time, with more or less particularity, and of course with some variation of circumstances, but always with a distinct declaration that the wound was given while he was picking up the ramrod. It was manifest, however, that as his strength failed, his mind wandered, and though at times perfectly sensible, he was unable to tell a connected tale of events.

The conduct of the prisoner, after the mortal wound, was the next subject of inquiry. *It was certain he never mentioned the circumstance to any one until after Josiah had been found, on Sunday morning.*

Achsah Buckland, a sister of the deceased, aged ten years, testified that, about twelve o'clock, on Saturday, she was carrying dinner to her father, who was at the water shops, and passed Moses, who was running in a direction from the hop-house to his father's. He said nothing.

Solomon Mackary, about four o'clock on Saturday, was planting trees in the burying-ground. The prisoner came by him, having a spade in his hand. Witness asked what he was going to do with it? He said, to dig angle-worms. Witness said, the burying-ground was a good place for worms. Prisoner said, he knew a better; and passed on in the direction towards the hop-house.

James Hubbard saw the prisoner coming from the direction of the hop-house on Saturday afternoon, but thought the time was between two and three o'clock. Prisoner said, he had been after worms.

Thomas Warner, Jr., saw the prisoner on the same afternoon, and knew the time to be after four o'clock, and so much after as it took him to walk from the water shops to the place where he met the prisoner, which he judged would be four minutes. His attention was attracted to the prisoner because he was running when witness first

saw him; but when the prisoner observed him, he changed to a walk. At this time the prisoner had no spade, and he saw no worms. Prisoner was not going in the direction of his father's house.

George B. Phelps met the prisoner, about four o'clock, on the same afternoon. He had a spade, and said he had been to get angle-worms, and that he had sold his pistol for four dollars.

Philo F. Cook testified to the same facts. The prisoner then joined Phelps, Cook, and other boys, and played ball for half an hour, and kept company with them until six o'clock.

In the evening, after his return from work, Epaphras Buckland, the father of Josiah, alarmed at his absence, went to the house of Mr. Elliot, the father, to inquire for him. There he saw the prisoner, whom he did not before know. The prisoner, in answer to Mr. Buckland's inquiries, said that he supposed Josiah had run away, had gone to Boston, to get on board some vessel; that he had twenty-five cents with him, which he had procured by selling some old iron. Being asked where he last saw Josiah, he would not give much of any answer. At this time, it must have been known to the prisoner that Josiah was wounded and perishing in the open field, and that a word of information might save his life.

On Sunday morning, before Josiah was found, Mr. Luther Hormer, and his son Chester, one of Moses Elliot's playmates, met Moses, half a mile from the hop-house. Moses had a pistol. He said he had lent it, the day before, to Josiah, to go shooting; that Josiah had run off; that he had found the pistol by the hop-house, and also Josiah's clothes.

Walter Buckland, aged sixteen, a brother of Josiah, was out on Sunday morning, and met Moses, at some distance from home. He reported the matter to his father, who sent him out again, to watch Moses. Walter found him, and asked him if he knew where Josiah was? He replied, "He has gone to Boston." Being interrogated where he had been himself, he said, to the hop-house, and that Josiah's clothes were there. Walter asked him to go and show him the place, but he refused, and said he must go home and prepare to go to meeting. Walter told him, he should go, and obliged him to go. Under the hop-house steps he found Josiah's clothes; on the steps he found the pistol, and at some distance the ramrod. Moses said the pistol was his, and Walter let him take it. Walter then proposed to go in search of Josiah, and wanted Moses to assist; but Moses declined, and went home. Walter proceeded to search, and called in a loud voice for Josiah, for some time, without effect. At last he found him, crawling along by the fence, near the running water, twenty or thirty rods from the hop-house. Josiah then said, Moses had shot him, and he should die; that Moses had loaded the pistol, and thrown the ramrod off, and told him to get it; that while he was getting it, Moses had fired, and shot him, and then ran away. Help was now immediately obtained, and the child was carried home.

The examination and dressing of the wound then took place, as before stated; after which, and after a religious conversation with the Rev. Dr. Osgood, and when Josiah was fully impressed with his dying condition, the declaration was made to his mother which is above narrated.

The evidence produced by the prisoner related, first, to statements made by Josiah after the one testified to by his mother, with a view, from certain discrepancies between them, to raise a belief that he was not of sane mind after he was brought home; but the contrary to this plainly appeared from the testimony of the attending physician, and the Rev. Dr. Osgood.

It appeared from other evidence, that the boys had been together on Friday, and slept in the same bed, at the house of one Adams, on Friday night. It was hence inferred there was no unfriendly feeling between them. Some attempt was made to show a want of mental capacity in the prisoner, but the reverse was clearly established.

The defence — which was conducted by Messrs. Morris and Ashmun, of Springfield — rested mainly on the entire want of any adequate motive for so malignant an act; on the youth and inexperience of the prisoner, and the extreme probability that the pistol went off by accident, so that the death thereby occasioned was involuntarily caused by the prisoner. It was attempted, also, to show that, by the direction of the ball through the body of the deceased, the pistol could not have been discharged when the deceased was in the position represented by his dying declaration. Much evidence was given, on both sides, to this point, showing the nature of the ground and the direction of the other balls fired upon the hop-house. It appeared that the ground, at the hop-house, was at twenty inches elevation from certain bushes, which, from the appearances about them, was the position taken by the boys when they were firing; and if the ramrod had been thrown in that direction, the inclination of the wound would correspond with the course of the other balls, which, by an accurate measurement, were found from five feet eleven inches, which was the highest, to four feet one inch, which was the lowest. From the appearance of the body, it could be seen that the ball entered in front; but, except from the declaration of the deceased, which was full to this point, it could not be proved in what position he was when he received the wound.

The conduct of the prisoner, after the fatal wound, was attributed by his counsel to fear and ignorance.

On the last day of the trial, which was occupied by the arguments of the counsel, the court was in session from eight o'clock, A. M. until eleven o'clock at night, during all which time the house was thronged with an unmoving, compact mass of the female population of the county.

The jury acquitted the prisoner.

RECENT AMERICAN DECISIONS.

Circuit Court of the United States, Massachusetts, October Term, 1841, at Boston.

HILLIARD, GRAY, & CO., *v.* HARPER & BROTHERS.

Construction of a contract in relation to the sale of books.

Conversations between parties, at the time of making a contract, are competent evidence to show the sense they attached to a particular term used in the contract.

THIS was an action of assumpsit, to recover the sum of $841,39, the balance of an account, alleged to be owing by the defendants to the plaintiffs, for sundry volumes of Sparks's American Biography. The plaintiffs, in order to maintain their action, produced in evidence the following agreement: "Boston, May 22, 1839. We agree to take of Hilliard, Gray, & Co. any volumes of Sparks's American Biography, bound or unbound, that they may ship to us, within three months from this date, at the cost thereof, and pay for the same in six months from date of shipment. Harper & Brothers." The plaintiffs contended, that the cost of the books in question consisted of four items of expense: 1st, paper; 2d, press-work; 3d, binding; 4th, amount paid by the volume to the owner of the stereotype plates to produce the books.

To prove these items, they introduced in evidence a letter written by the plaintiffs to the defendants, as follows:

"BOSTON, August 10th, 1839.

"*Gentlemen:* — On the 22d of May you agreed to take of us any volumes of Sparks's American Biography, bound or unbound, that we might ship to you within three months from that date, *at the cost thereof;* we have accordingly shipped this day, as per bill of lading, to your risk, the books, as per bill, and on the same sheet have given a statement of the *cost of making the books*, with the amount paid Mr. Sparks for copyright; but we have added nothing for interest, which we shall claim the right to add hereafter, if you dispute the correctness of our estimate, or way of making up the cost, according to a legal construction of your contract, that would make the cost to us as much as the paper. We have put in, also, a large lot of back-titles and over-sheets for which we have made no charge; but we shall expect them to be returned to us, unless you will agree that if any of the books we have heretofore sold should be found incomplete, that you will supply the sheets wanted without charge to us. We have charged a lot of heads, title-pages and fac simile plates, at less than cost to us, they being valuable to you; but if not willing to pay the sum named, please return them to us. If we had time, many of

them might have been placed in the volumes sent, consequently not so much deducted from the volumes where they belong; but this is a small matter — you may take them, or not, at that price, as you choose. Having complied with our part of the contract with you, we shall expect you to send us your note at six months from this date, for 1641,39 — less 25 dollars for the plates, if you do not take them.

Yours, respectfully, HILLLIARD, GRAY, & Co.

Messrs. Harper & Brothers, Booksellers, New York.

P. S. You will find all the copper and steel plates belonging to the work, in a bundle, in box No. 6."

On the same sheet with this letter, was a computation of the cost of the American Biography, made up by the plaintiffs, each volume separately, and specifying the number of volumes printed:

No. of copies.	Cost of paper.	Cost of printing.
Vol. 1, 2000	$255,50	$245,33
500	53,40	24,00
" 2, 2000	256,38	283,70
500	60,40	23,40
" 3, 3000	328,50	279,70
500	50,40	24,30
" 4, 2000	259,30	281,67
1000	128,45	140,83
500	60,20	24,30
" 5, 2500	295,43	118,45
" 6, 1500	174,15	73,00
500	53,40	21,60
" 7, 1500	218,25	81,00
" 8, 1500	195,75	78,00
" 9, 1500	152,25	76,00
" 10, 750	84,20	40,00
750	84,20	40,00
22,500	$2709,97	$1855,48
	Paper,	2709,97
	Binding,	2812,00
	Printing fac similes,	304,50
	" portraits,	196,87
	Paper for fac similes,	52,20
	" " portraits,	29,25
		$7960,27

being 35,37-100 cts. per vol.

Vols. 1, 2, 3 and 4 — cost of paper, &c.,		$35,37	
Copy-right paid Mr. Sparks on these volumes,		12,50 —	$47,87
	883 vols.,		421,59
Vols. 5, 6, 7, 8, 9 and 10 — cost of paper, &c.,		$35,37	
Copy-right paid Mr. Sparks on do.,		26,00	
	2623 vols.	$61,37	1609,73
	3506 vols.		$2031,32

being 57 cts. per vol.

The account of the volumes sent was also contained in the same sheet, by which it appeared that they had sent 3506 volumes, bound, unbound, and in sheets — some with and some without plates; among these was not a perfect set, and 1600 volumes were imperfect. The amount charged for the books was $1611,97; lot of portraits, title

pages and fac similes, $25; 4 boxes, $4,42 — $1641,39. The plaintiffs then produced the following letters:

[HARPER TO GRAY.]

New York, August 30th, 1839.

Messrs. Hilliard, Gray, & Co.:

Gent'n: — Your favor of the 10th inst. has been received. Having several times, in person, demurred to your charges for *copy-right* on the odd volumes of Sparks's American Biography, we now do so formally, in writing, and at the same time propose leaving the question at issue between us to the arbitration of disinterested men.

We requested Messrs. Folsom, Wells, and Thurston, some time since, to forward the volumes of the work which they printed for us; but, as they have not done so, we take the liberty of asking you to request them to send them on without delay.

Respectfully, your ob't servants,

HARPER & BROTHERS.

[GRAY TO HARPER.]

Boston, December 9, 1839.

Gentlemen: — In our last we requested you to send us your two acceptances, of $800 each, to balance the bill of Biography; but not hearing from you, and wanting that paper for immediate use, we have drawn on you for $800, through the bank, which we trust you will not refuse to accept, on account of our bill for Biography, as it is only part of the amount, and will not compromise you in the question in dispute between us. We have made the draft payable in March, instead of February, when the amount is due; and we hope you will not hesitate to accept it and send us another for the balance soon, and thus end this disagreeable affair without any more words on the subject.

Yours respectfully,

HILLIARD, GRAY, & Co.

Messrs. Harper & Brothers, New York.

The plaintiffs upon these letters contended that the only question left open was the question of copy-right. They abandoned the claim for amount of copy-right paid on the first four volumes. They then produced an agreement made between the plaintiffs and Mr. Sparks, for publishing the last six volumes, by which it appeared that the plaintiffs agreed to pay Mr. Sparks $650 per volume for the right of publishing 2500 of each of said volumes, and the use of the stereotype plates. This agreement bore date April 26, 1836. They also produced the receipts of Mr. Sparks for $650 for each of said volumes. The receipt for last volume was dated Nov. 15, 1838. They then called Charles Folsom, who proved the price of printing to be as stated in the account rendered by the plaintiffs. He also made the following statement of the number of volumes published, the time of publication, and cost and time of stereotyping each:

Vol. 1,	2000	copies	from	movable types — 1834, Jan. 27.				
	500	"	"	stereotype plates — 1838, Dec. 26 — cost of plates,				$238,91
Vol. 2,	2000	"	"	movable types — 1834, April 11.				
	500	"	"	stereotype plates — 1839, Jan. 27 — cost of plates,				276,33
Vol. 3,	2000	"	"	movable types — 1855, Jan. 3.				
	500	"	"	stereotype plates — 1839, Feb. 14 — cost of plates,				230,76
Vol. 4,	2000	"	"	movable types — 1835, Aug. 12.				
	500	"	"	stereotype plates — 1839, April 16 — cost of plates,				279,89
Vol. 5,	2500	"	"	"	"	1836, May 28,	"	" 275,50
Vol. 6,	1500	"	"	"	"	1836, Sept. 6,	"	" 264,04
	500	"	"	"	"	1839, April 26.		
Vol. 7,	1500	"	"	"	"	1837, March 3,	"	" 305,00
Vol. 8,	1500	"	"	"	"	1837, Sept. 25,	"	" 281,16
Vol. 9,	1500	"	"	"	"	1838, March 16,	"	" 294,89
Vol. 10,	750	"	"	"	"	1838, Dec. 20,	"	" 362,41
Vol. "	750	"	"	"	"	1839, Feb. 8.		

The defendants admitted, for the purpose of this trial, that the cost of paper and binding of said volumes was correctly charged in the plaintiffs' account.

The plaintiffs here rested their case.

The defendants' counsel then opened the defence, and introduced the following evidence:

1. A deed of the copy-right of the whole ten volumes, and the stereotype plates of the last six volumes, from Jared Sparks to Hilliard, Gray, & Co, dated October 15th, 1838, and recorded November, 1838, for the consideration of $2400 — reserving to Mr. Sparks the right of publishing the lives written by himself.

2. A deed of the copy-right of stereotype plates of the whole ten volumes, from Harrison Gray and Charles Brown to Harper & Brothers, dated May 22d, 1839, acknowledged June 27, 1839, and recorded July 15th, 1839 — reserving to Mr. Sparks the same rights as the deed to Hilliard, Gray, & Co., and subject to a contract made with Messrs. Folsom, Wells, and Thurston, and a contract made with Marsh, Capen, & Lyon, by Hilliard, Gray, & Co.

3. A deed from the plaintiffs to the defendants, (which had been cancelled on account of informality of execution,) dated May 22, 1839, of the same copy-rights and plates as preceding, and in every respect like it, except that it was made and executed in the firm name of Hilliard, Gray, & Co., and contained no reference to the contracts with Folsom, Wells, & Thurston, and Marsh, Capen, & Lyon.

4. The following correspondence between the parties:

[HARPER TO GRAY.]

New York, June 29, 1839.

Harrison Gray, Esq.

Dear Sir: — The deed of copy-right for "Sparks's American Biography," which you have substituted for the one which I obtained from you when I made the purchase, *is not satisfactory*. At the time I received it of you, you *promised*, in the presence of Mr. Wells, that you would have another executed, with the individual signatures of your firm, if required. My brother understood that you declined giving such a deed; but I am in hopes that he misunderstood you. Permit me, therefore, to inquire whether you will, or will not, have such an instrument executed, without *any* variation, other than that of substituting the individual signatures of your house, instead of the general signature of your firm?

Please let me hear your definite and conclusive decision by return of mail, and much oblige

Your ob't. servant,

F. HARPER.

[GRAY TO HARPER.]

Boston, July 2, 1839.

Fletcher Harper, Esq.

Dear Sir: — I duly received yours of the 29th, and must confess that I am quite surprised at its contents. When your brother presented our deed, signed by me for our firm, no objection was made as to a new one; my partner, Mr. Brown, who had never seen the paper before, suggested that, as we had conveyed to you two contracts with Marsh, Capen, & Lyon, and Folsom, Wells, & Thurston, they should have been added or recognised in the contract or conveyance, and it was agreed to by your brother, and made part of the new conveyance; now, as this was an agreement with the senior partner of your house, and only recognises the two contracts, which made part of the contract or conveyance to you, I cannot see why you have any reason to

be dissatisfied with it, and I would respectfully ask you to state where it differs from our original agreement. Respectfully, &c.

H. Gray.

[Harper to Gray.]

New York, July 9th, 1839.

Harrison Gray, Esq.

Dear Sir: — My brother Fletcher has just shown me a letter from you, in which you state that I agreed to a change in the deed of copy-right which you gave him for Sparks's American Biography. In this you are mistaken, as I distinctly informed you that I had paid no attention to the subject of the contract, and did not feel myself at liberty to interfere therein; and it was entirely upon your representations that all should be right and satisfactory, that I consented to the destruction of the original deed. Having since heard my brother's views, objections, &c., I now concur with him in opinion, that the present deed *is not satisfactory*, and such as under the circumstances it should be; and that you are bound in honor to execute the deed as originally agreed upon between him and yourself. Hoping that you will not refuse to do so, I remain Yours truly,

James Harper.

[Harper to Gray.]

New York, July 9, 1839.

Harrison Gray, Esq., Boston.

Dear Sir: — I have yours of the 2d inst. By the annexed letter of my brother, you will at once perceive that the ground you assumed, of there having been "an agreement made with the senior partner of our house," is not correct.

Permit me, therefore, again to inquire whether you will, or will not, fulfil the agreement you made in relation to the original deed of copy-right, which you gave me?

Please let me hear from you by return of mail.

Your ob't servant,

F. Harper.

[Gray to Harper.]

Boston, July 11, 1839.

Dear Sir: — Yours of the 9th, with your brother's of same date, is before me. I am more surprised at his letter than I was at your last, as I can prove all I stated in my last, that your brother cheerfully agreed to the change we made in the conveyance of the copy-right, and read the same over carefully with our book-keeper, after he had copied the original memorandum agreed upon; and I cannot see why you, or he, or any one else, should be dissatisfied with it, as I can prove by Mr. J. Brown, that you agreed to fulfil those contracts, and if you will refer to the transfer of them on the back, you will find that in Folsom, Wells, & Thurston's it was so expressed; and you must be aware that we could not legally give you a deed of the copy-right without reference to those contracts; and as I am unwilling to suspect that you wish to have the deed with that omission, to make a question of your liability to fulfil those contracts, you will please inform us, as I requested in my last, what you are dissatisfied with, or send us the form of a deed such as you want, and if not inconsistent with my agreement with you, and has reference to the fulfilment of those contracts, I have no doubt my partner will cheerfully sign it with me. Yours respectfully,

Harrison Gray.

Fletcher Harper, Esq., New York.

[Gray to Harper.]

Boston, July 20, 1839.

Gentlemen: — When your Mr. James Harper was here, we gave him a letter to your house, with a list of the volumes of American Biography on hand, and proposed an exchange of vol. 5 for vols. 1, 2 and 3, to complete sets. If this is done, we must have the vols. 1, 2 and 3 immediately, or we shall not be able to complete the sets in season to answer our purpose, and the consequence will be that we shall have a larger lot of odd volumes to send you, at a high price, according to the contract with us. Let us have your order, by return of mail, on Messrs. Folsom, Wells, & Thurston, for the volumes, according to our letter, and much oblige

Your ob't. servants,

Hilliard, Gray, & Co.

Messrs. Harper & Brothers, New York.

[HARPER TO GRAY.]

New York, July 23, 1839.

Messrs. Hilliard, Gray, & Co.

Gent: — Yours of the 20th instant is at hand. We are unwilling to comply with your request therein. You need not fear but that any "contract" you have with *us*, whether at a "high price" or low price, will be fulfilled to the letter.

Respectfully,

HARPER & BROTHERS.

5. A copy of the agreement made for the purchase of the volumes of the Biography in the handwriting of plaintiffs' clerk in all respects like the one produced by plaintiff, except at the foot of the same was a memorandum of three acceptances of $2000 each.

6. Three acceptances of the defendants, which they had taken up, for $2000 each, dated May 22, 1839, payable to plaintiffs in six, nine and twelve months. Also, three acceptances (taken up) for $800, dated December 9, 1839, in three months.

7. The assignment from plaintiffs to defendants of the contract with Marsh, Capen & Lyon, dated May 22, 1839, and the contract with Folsom, Wells & Thurston of the same date.

Here the defendants rested their case.

The plaintiffs then called Jared Sparks, who testified to the payments being made as stated in his receipts.

John G. Roberts, who testified that many of the volumes sent were deficient only in engravings, title pages and portraits.

James Brown, who testified that he was a secret partner of the firm of Hilliard, Gray & Co. at the time of the transfer of the copyrights and plates to the defendants; that he recollected the transaction; that he was present at Gray's store when the negotiation was going on between Gray and Fletcher Harper; that he understood that the defendants had agreed for the copyright, plates, and all the odd volumes. He could not say that the written contracts had then been signed. He did not recollect that any thing was said as to the cost of the odd volumes; something was said about completing of sets; the defendants were to fulfil the contract with Marsh, Capen & Lyon, and Folsom, Wells & Thurston. Witness could not state what was said in regard to Gray's retaining the plates for that purpose. They had some difficulty, but he could not state what, as his attention was not specially called to it at the time. Soon after Gray and F. Harper came to the store of the witness; they differed as to the details of the bargain, and came there to settle in some way or other. The difficulty was, what constituted the cost of a volume. Gray wished to include copyright. Harper thought it ought not to be included, as he had already purchased the copyright. Harper offered to refer the question to me to decide; this Mr. Gray declined. Witness did not hear Gray tell Harper what the cost would amount to. He said the cost would be high. At the time of the last conversation, witness *supposed* the contracts had not been signed, as it was so soon after the first conversation. He did not, however, *know* whether they had or had not then executed the contracts.

The defendants then introduced the following note from the plaintiff.

TREMONT HOUSE, 8 o'clock P. M., May 24, 1839.

I called to see you in hopes we should be able to settle the price of the volumes of Biography. If it is not correct to include the plates in the cost, something should be added for their use. At any rate, I think if you will stop until the afternoon train for Worcester to-morrow, you and I can settle the question without the *sin* of giving any wine to referees for what we can settle ourselves. I cannot ship the books until this question is settled. We shall lose the chance of selling them to others.

Yours truly, H. GRAY.

Rand and *Fiske* for the defendants, contended;

1. That the plaintiffs' account as made up by them, was erroneous upon their own principle. That all the volumes sent were printed from plates, and that in computing the cost the plaintiffs had charged for what is technically termed *composition* on the first four volumes. That the amount to be recovered by the plaintiffs, if the charge of copyright on the last six volumes was correct, was $633 23. If the copyright was not included correctly, then the defendants had overpaid $49 75. That from the above sum, at all events, should be deducted the amount charged for the copies of the sixth and tenth volumes sent, which had been printed since the plaintiffs became proprietors of the copyright and plates.

2. That the charge for copyright, or use of plates, was not to be reckoned as part of the cost of the books under the circumstances of this case. That whatever might be the true meaning of the terms "cost thereof" under ordinary circumstances, under the circumstances of this case they could only include the "*cost of making*" the books. That the plaintiffs owned the copyright, and therefore stood precisely in the same position as the author, and he might as well include what he had expended in writing the book, as the defendants could, in this case, include what they had charged; and the plaintiffs might with equal propriety here include the cost of the stereotype and altered plates. That the sale of copyright and plates having been made to the plaintiffs at the same time, or just prior to the making the contract for the books, it was most manifest that the defendants never could have intended to pay the plaintiffs a second time for the copyright; that they could only have intended to mean by the word *cost*, the cost of "*making the book*," and that the plaintiffs could not have intended any more, nor could they, in justice recover any more. That the defendants having purchased the copyright and plates of the plaintiff, were in fact doing the plaintiffs a great favor to take, at the cost of manufacturing, the odd and imperfect volumes which they might have on hand after three months further sales. That the defendants' view of this matter was aided by the consideration, that as they owned the copyright and plates, they could produce the books for the simple cost of making them; and it could hardly be supposed possible that they should be willing to pay for odd and imperfect volumes to the plaintiffs twenty-six cents per volume more than what it would cost to produce them.

John A. Bolles for the plaintiffs, contended that the contract of the defendants for the purchase of the volumes of Biography and the sale of the copyright and plates by the plaintiffs, were separate and independent contracts, as much so as though they had been made with different persons. That from the evidence it was certain that the plaintiffs had paid Mr. Sparks twenty-six cents per copy for each of the last six volumes, and that, therefore, the same was part of the cost to them, and to be included in the sum to be paid by the defendants. That it was certain, from the contract with Mr. Sparks, and the number of volumes published, that the plaintiffs had paid Mr. S. thirty-seven cents per volume, and therefore were entitled to recover $959 41. That if they were precluded by the account rendered by them from recovering beyond twenty-six cents per volume, they were entitled to recover $674 18, the whole number of copies of the last six volumes sent by the plaintiffs to the defendants, being 2593. That the defendants, in their letter of August 30th, 1839, having excepted only to the charge for copyright, were presumed to be satisfied with the order of cost as made up by the plaintiffs, and the sum paid by them was intended to apply to those items only. The plaintiffs farther contended, that from the last letter of the plaintiffs, introduced in evidence by the defendants, it was to be presumed that the whole question had then been settled between the parties, and that the assent of the defendants to the charge for copyright was to be presumed therefrom.

STORY J., in summing up to the jury, said: It appears to me, that the words of the written contract, "at the cost thereof," ought to be construed, "all the cost of the copies," including the allowance to Mr. Sparks, unless it is clearly made out in the evidence, that the parties, in the use of this language, adopted a different construction, and limited the "cost" to the mere expense of the paper, press work, and binding. I do not think, that it is absolutely incompetent for the parties to show from the conversations between them at the time of making the contract, what was the sense in which they then understood the word "cost" as used in the contract, as it is a word capable of a larger or narrower construction according to the subject matter, and the circumstances of the particular case. Those conversations may be deemed a part of the *res gestæ*, and thus may be referred to, as explanatory of the real intentions of the parties in the use of the word. It appears, however, that the parties at the very time differed as to the very point, whether the money paid to Mr. Sparks ought to be included in the "cost" or not; and there is no evidence to establish in direct terms, how the disputed item was settled between them. If the contract was signed after the dispute, it would go far to show, that the word "cost" ought to include the money paid to Mr. Sparks, since in its general meaning the word "cost" would certainly comprehend that expense. But the learned counsel for the plaintiffs

insist, that the contract at the time of the dispute had been actually signed and completed; and if so, then every inference of this sort is repelled. On the other hand, if the contract was not signed at the time of the dispute, it is singular, that the ambiguity should not have been removed by the addition of some explanatory language.

The whole point in the argument turns upon this. The plaintiffs say, that "cost" includes all the items of cost, there being no qualifying words to limit the meaning. The defendants on the other hand say, that this could not have been the intention of the parties, because the defendants had then purchased all the stereotype plates from the plaintiffs, and consequently could publish complete copies of all the volumes, instead of taking broken series, at the mere cost of the paper, press work, and binding; and this is certainly true. If the purchase of these volumes had constituted a part of the original bargain for the purchase of the copyright and plates for $6000, then it would be easy to see, that the taking these copies at the enhanced price of the money paid to Mr. Sparks might have been included. But this construction also is repudiated by the plaintiffs' counsel, who insists, that the bargains were independent of each other. There is, therefore, great difficulty in arriving at a satisfactory conclusion, and the jury will decide the matter upon a close review of all the circumstances.

The jury retired at half past one o'clock in the afternoon, and after remaining together until the opening of the court on the next morning, came in and stated they could not agree. The judge gave them some farther instructions on their application, and they again retired. At half past ten o'clock they again came into court, and said there was no prospect of their coming to any agreement, and they were then discharged.

Reed *v.* Robinson.

Under the patent laws of the United States, the applicant for a patent must be the *first*, as well as the *original*, inventor; and a subsequent inventor, although an *original* inventor, is not entitled to a patent, if the invention is perfected and put into actual use by the first and original inventor; and it is of no consequence, whether the invention is extensively known or used, or whether the knowledge or use thereof is limited to a few persons, or even to the first inventor himself, or is kept a secret by the first inventor.

The decision in *Dolland's* case, that a *first* and *original* inventor, who had kept his invention a secret, so that the public had no benefit thereof, could not defeat the patent of a subsequent *original* inventor, may be a correct exposition of the Statute of Monopolies, (Stat. of 21 James I. ch. 3, § 6), but it is not applicable to the Patent Law of the United States.

The language of the Patent Act of 1836, ch. 357, § 6, "not known or used by *others* before his or their discovery thereof," was not designed to show a plurality of persons by whom the use should be, but that the use should be by some other person or persons than the patentee.

The Patent Act of 1836 (ch. 357, § 15) provides among the special matter to be given in evidence, that the party "had surreptitiously or unjustly obtained the patent for that which was in fact invented or discovered by another, who was using reasonable diligence in adapting and perfecting the same." Under this clause an inventor, who has first actually perfected his invention, will not be deemed to have surreptitiously or unjustly obtained a patent for that which was in fact invented by another, unless the latter was at the time using reasonable diligence in adapting and perfecting the same; and he, who invents first, shall have the prior right, if he is using reasonable diligence in adapting and perfecting the same, although the second inventor has in fact first perfected the same and first reduced the same to practice in a positive form.

An imperfect and incomplete invention, resting in mere theory or in intellectual notion, or in uncertain experiments, and not actually reduced to practice, and embodied in some distinct machinery, apparatus, manufacture, or composition of matter, is not patentable under the laws of the United States. He is the first inventor, in the sense of the Patent Act of the United States, and entitled to a patent for his invention, who has first perfected and adapted the same to use; and until the invention is so perfected and adapted to use it is not patentable.

In a race of diligence between two independent inventors, he who first reduces his invention to a fixed and positive form, is entitled to a priority of right to a patent therefor.

A disclaimer, to be effectual for all intents and purposes, under the act of 1837, ch. 45, (§ 7 and § 9), must be filed in the patent office before the suit is brought; if filed during the pendency of the suit, the plaintiff will not be entitled to recover costs in such suit, even if he should establish at the trial, that a part of the invention, not disclaimed, had been infringed by the defendant. And where a disclaimer has been filed, either before or after the suit is brought, the plaintiff will not be entitled to the benefit thereof, if he has unreasonably neglected or delayed to enter the same at the Patent Office; but an unreasonable neglect or delay will constitute a good defence and objection to the suit.

Case for infringement of two patent rights; one for "A new and useful improvement in the pump;" the second for "A new and useful improvement in the cast-iron pump." The declaration contained two counts, one applicable to each patent.

The first patent was to Jesse Reed, the plaintiff, and was dated August 5th, 1831. The improvement claimed by this, and which it was alleged the defendants had infringed, was described in the specification as follows: "Under the flange is a plate about twelve inches in diameter, of suitable thickness for the strength required; near the circumference of the plate are a sufficient number of holes for wood screws or bolts, that said plate may be attached to any board or plank in whatever place said pump may be used." . . . . "The lower valve is attached to the lower plate by copper screws or rivets, so that the pump may be taken off to come at the lower valve without disturbing the lower plate or pipe." The words of the claim of that part alleged to have been infringed by the defendants, were as follows: "The bottom plate in a horizontal manner with a valve attached to it, and playing upon said elevation, and the manner of connecting it with the plate, as set forth in the specification."

The second patent was to Jesse Reed and Josiah Reed, and was dated 19th Nov. 1833. Subsequently, Josiah assigned his interest to Jesse. Among other improvements claimed by this was that, which is now in such general use in metal pumps, of letting off the water

from the cylinder of the pump, by throwing up the handle. The lower valve is armed with a projection which, when the handle is thrown up to its greatest extent, opens the valve of the piston, at the same time that the lower valve itself is opened by means of the pressure of this projection against the internal sides of the piston. In this way water in the cylinder may be let off readily, and the important object attained of guarding effectually against the effect of frost in the cold season of the year. It was alleged that the defendants had infringed this part of the plaintiff's patent. Plea, the general issue, with special matters of defence filed.

At the trial evidence was offered tending to show that the improvement, claimed in the second patent, of letting off the water, had been invented and reduced to practice by Anthony D. Richmond, of New Bedford, some time in 1828, and that he had made several pumps containing this improvement, before the date of the plaintiff's patent. It was suggested by the counsel for the plaintiff, that there was evidence tending to rebut this evidence; and a question was raised as to the degree of use and publicity of a prior invention, which would operate, in point of law, to defeat a *bona fide* original invention, which had been patented.

Charles Sumner insisted for the plaintiff;

1. That the object of the exclusive privilege of a patent is to secure to the *public* the communication of a species or mode of industry which it did not before possess. Therefore, the patent of a *bona fide* original inventor will be valid, unless an invention be shown, which, anterior to the invention of the patentee, *was reduced to practice in such a way and to such an extent, as to give the public knowledge of its existence.*

The statute of the United States of 1836, cap. 357 § 6, provides that "any person or persons having invented any new and useful art, machine, &c., *not known or used by others*, before his or their discovery or invention thereof," and who makes oath that he verily believes that "he is the *original* and *first inventor* or discoverer," &c., shall be entitled to a patent. In another section of the same statute, § 15, it is provided that the defendant may give in evidence "that the patentee was not the *original* and *first* inventor or discoverer of the thing patented," &c. If we were to consider the first clause by itself, without reference to that in the sixteenth section, it would seem clear, that an invention must have been *known and used by others*, before the discovery of the patentee, in order to defeat the patent. The term *others* would seem to imply general and *plural* knowledge, in contradistinction to knowledge by an individual. Unless this effect is given to this word, it loses much of its significance. The word, however, is borrowed from the English Statute of Monopolies, out of which the English Patent Law is carved, which secures a patent to the first and true inventor of an art "which *others* at the time of making such letters patent and grants *shall not use.*" These words have

received repeated constructions in England. It has there been decided that a prior invention, in order to defeat the patent of a subsequent true and original inventor, must have been "*generally known*;" that it must have been in "*public use and operation*;" "*used openly in public*," and *not abandoned as useless* by the first inventor. See *Lewis* v. *Marling*, 10 Barn. & C. 22; S. C., Godson's Supplement, 6, 7, 8; *Jones* v. *Pearce*, Godson's Supplement, 10, 12. Mr. Godson's own language (p. 4 of the Supplement) admits the above cases to be law.

The statute of the United States of 1793, cap. 55, § 1, says, "not *known or used* before the application," &c. These words have received a construction from the Supreme Court of the United States. Story J., in delivering the opinion of the court, in *Pennock* v. *Dialogue*, 2 Peters, S. C. R. 19, said: "We think, then, the true meaning must be *not known or used by the public* before the application. McLean J., in delivering the opinion of the court, in *Shaw* v. *Cooper*, 7 Peters, 319, said, "the knowledge or use spoken of in the act of 1793 could have referred to the *public only*." The words used by the court are broad, explicitly declaring that the knowledge and use must be by the *public*. It appears that in the cases actually before them, the knowledge and use had been derived *from* and *under* the patentee, having crept abroad before he had secured his invention by letters patent; but, it is submitted that, in view of the language employed by the court and afterwards in the statute, the difference between those cases and the present does not authorize a different construction. How can the court restrain the word "*others*" to mean only those who have derived their knowledge *from* the patentee? Particularly, when this word is employed in the English statute, and has there received the construction now contended for.

The clause in the sixteenth section can hardly throw doubt upon this construction. The clause in the first section is the *granting* part of the statute, which is to be construed amply for the citizen, particularly in an act of the present nature. The whole act must be construed so as to give each clause its fullest effect; and no word or phrase is to be curtailed of its proportions, unless it is essential to a reasonable construction of the whole statute. If in the present case, it is necessary to abate from any clause of the statute any of the just effect which such clause would have, if taken by itself, we must restrain the clause in the sixteenth section; in other words, it must be construed by reference to the *granting* clause in the first section. He must be considered the *first* and *original* inventor, who has invented an art or machine not known or used by *others* before his discovery thereof.

In confirmation of this view is Dolland's case, (2 H. Black. R. 487; Phillips's Patents, 165,) where the first inventor reduced his invention to use, but kept it secret, and showed an intention not to give the public the benefit of it. It was the case of an improvement

in the object-glass of telescopes, invented by Mr. Hall, but suppressed by him till Mr. Dolland had subsequently made the same invention, and procured a patent for it, the validity of which was disputed on the ground that he was not the first inventor. But the patent was held to be valid. Mr. Phillips (Patents, 165,) says, this case must stand on the ground that, as the first inventor did not give *the public* that advantage which it was the intention of the patent laws to secure, he should not stand in the way of a subsequent inventor who should be ready to give the public such advantage, at the end of the period provided for by the patent laws. This doctrine was recognised in a subsequent case. *Forsyth* v. *Pearce*, Chitty, Jr., Crown R. 182, n.

The object of the patent law is to promote *the progress of useful arts;* 1st, by stimulating ingenious minds to make inventions; 2nd, to secure to the public the benefit of the invention, by having the secret fully *divulged* on the expiration of the patent. It is said, indeed, that the future *divulging* of the secret is the *consideration* of the grant of exclusive privileges. Let us bear these in mind in construing these words — "*known and used.*" If the thing be *known and used*, the public good does not require the interference of the patent law; either to stimulate inventors, or to secure the divulging of the secret, for the invention is already made, and the secret is divulged. If the thing, however, be not so *known and used*, that the public will eventually have it, as if it be kept an entire secret like Dolland's glass, or if it be thrown by as useless, or if it be used in private and in a corner, then it will justify the protection of the patent law — *dignus vindice nodus.* It is effectually reached by its spirit and is not discarded by its letter. The *original* inventor, who afterwards *bona fide* hits upon it, and matures it into something useful, deserves well.

The *Patent* Laws of Austria (§ 27, (a), (d), Phillips on Patents, 516, 517,) provide that "every discovery, invention, improvement, or change, shall be held as new, if it is not known in the monarchy, *either in practice,* or by a description of it contained in a work publicly printed."

II. The counsel for the plaintiff submitted another point, in the words of Mr. Phillips, in his work on Patents, (page 395) — being a construction which this acute and learned author has put upon two clauses of the 15th section of the Patent Law of 1836. It was as follows: "If the patentee is the *original* inventor of the thing patented, his patent shall not be defeated by proof that another person had anticipated him in making the invention, *unless it also be shown that such person was adapting and perfecting his invention.*"

Benjamin Rand for the defendants, *e contra.*

Story J. overruled these points, and said, under our patent laws no person, who is not at once the *first* as well as the *original* inventor, where the invention has been perfected and put into actual use by him, is entitled to a patent. A subsequent inventor, although

an original inventor, is not entitled to any patent. If the invention is perfected, and put into actual use by the *first* and *original* inventor, it is of no consequence, whether the invention is extensively known or used, or whether the knowledge or use thereof is limited to a few persons, or even to the first inventor himself. It is sufficient, that he is the first inventor, to entitle him to a patent; and no subsequent inventor has a right to deprive him of the right to use his own prior invention. The language of the patent act of 1836, ch. 357, § 6, § 15, and of the patent act of 1837, ch. 45, § 9, fully establish this construction; and indeed this has been the habitual, if not invariable interpretation of all our patent acts from the origin of the government.[1] The language of the act of 1836, ch. 357, § 6, "not known or used by *others* before his or their discovery thereof," has never been supposed to vary this construction, or to require that the invention should be known to more than one person, if it has been put into actual practical use. The patent act of 1790 used the language, "not before known or used," without any adjunct; (act of 1790, ch. 34, § 1,) and the act of 1793 used the language, "not known or used before the application," (act of 1793, ch. 55, § 1); and the latter act (§ 6) also made it a good matter of defence, that the thing patented "had been in use" anterior to the supposed discovery of the patentee; and it early became a question in our courts, whether a use by the patentee himself before his application for a patent, would not deprive him of his right to a patent. That question was settled in the negative; and the language of the first section of the act of 1793, ch. 55, was construed to be qualified and limited in its meaning by that of the sixth section; and the words "not known or used before the application," in the first section, were held to mean, not known or used *by the public* before the application.[2] The case of *Pennock* v. *Dialogue*, (2 Peters R. 1, 18 to 22,) is a direct authority to this effect. And it was probably in reference to that very decision, that the words "by others" were added in the act of 1836, ch 357, § 6, by way of explanation of the doubt formerly entertained on the subject. The words "by others" were not designed to denote a plurality of persons by whom the use should be, but to show, that the use should be some other person or persons than the patentee. It would be strange, indeed, if because the first inventor would not permit other persons to know his invention, or to use it, he should thereby be deprived of his right to obtain a patent, and it should devolve upon a subsequent inventor merely from his ignorance of any prior invention or prior use; or that a subsequent inventor should be entitled to a

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[1] See Phillips on Patents, ch. 6, § 4, p. 65, 66, edit. 1837. *Woodcock* v. *Parker*, 1 Gallis. R. 438. *Gray* v. *Osgood*, Peters Cir. R. 394. *Rutgen* v. *Kanowers*, 1 Wash. Cir. R. 168. *Evans* v. *Eaton*, 3 Wheat. R. 454. *Pennock* v. *Dialogue*, 2 Peters R. 1, 16, 20, 21, 22.

[2] See *Morris* v. *Huntingdon*, Paine Cir. R. 348. *Pennock* v. *Dialogue*, 2 Peters R. 1, 18, 19, 21, 22. *Miller* v. *Silsbee*, 4 Mason R. 108.

patent, notwithstanding a prior knowledge or use of the invention by *one* person, and yet should be deprived of it by a like knowledge or use of it by *two* persons. In *Pennock* v. *Dialogue* (2 Peters R. 1, 23,) the Supreme Court expressly held, that the sixth section of the patent act of 1793, ch. 55, then in force, (and on this point the law has not undergone any alteration,) "gives the right to the *first* and *true* inventor, and to him only; if known or used before his supposed discovery, he is not the *first*, although he may be the true inventor; and that is the case to which the clause looks."

I am aware of Dolland's case; but I do not consider it to be a just exposition of the patent law of this country, however correctly it may have been decided under that of England. In that case it seems to have been held, that Dolland was entitled to his patent, because he was an inventor of the thing patented, although there was a prior invention thereof by another person, who, however, had kept it a secret, so that the public had no benefit thereof; and perhaps this was not an unjustifiable exposition of the Statute of Monopolies, (Stat. of 21 James I. ch. 3, § 6,) under which patents in England are granted. But the language of our patent acts is different. The patent act of 1836, ch. 257, (§ 7, § 8, § 13, § 15, § 16,) expressly declares, that the applicant for a patent must be the *first* as well as the *original* inventor.

The passage cited from Mr. Phillips's work on Patents, (p. 395) in the sense in which I understand it, is perfectly accurate. He there expressly states, that the party claiming a patent must be the original and *first* inventor; and that his right to a patent will not be defeated by proof, that another person had anticipated him in making the invention, unless such person "was using reasonable diligence in adapting and perfecting the same." These latter words are copied from the fifteenth section of the act of 1836, chapter 357, and constitute a qualification of the preceding language of that section; so that an inventor, who has first actually perfected his invention, will not be deemed to have surreptitiously or unjustly obtained a patent for that, which was in fact invented by another, unless the latter was at the time using reasonable diligence in adapting and perfecting the same. And this I take to be clearly law; for he is the first inventor in the sense of the act, and entitled to a patent for his invention, who has first perfected and adapted the same to use; and until the invention is so perfected and adapted to use, it is not patentable. An imperfect and incomplete invention, resting in mere theory, or in intellectual notion, or in uncertain experiments, and not actually reduced to practice, and embodied in some distinct machinery, apparatus, manufacture or composition of matter, is not, and indeed cannot be, patentable under our patent acts; since it is utterly impossible, under such circumstances, to comply with the fundamental requisites of those acts. In a race of diligence between two independent inventors, he, who first reduces his invention to a fixed, positive, and practical form,

would seem to be entitled to a priority of right to a patent therefor.[1] The clause of the fifteenth section, now under consideration, seems to qualify that right, by providing, that, in such cases, he, who invents first shall have the prior right, if he is using reasonable diligence in adapting and perfecting the same, although the second inventor has, in fact, first perfected the same, and reduced the same to practice in a positive form. It thus gives full effect to the well known maxim, that he has the better right, who is prior in point of time, namely, in making the discovery or invention. But if, as the argument of the learned counsel insists, the text of Mr. Phillips means to affirm, (what I think it does not) that he, who is the original and first inventor of an invention, so perfected and reduced to practice, will be deprived of his right to a patent, in favor of a second and subsequent inventor, simply because the first invention was not then known or used by other persons than the inventor, or not known or used to such an extent as to give the public full knowledge of its existence, I cannot agree to the doctrine; for, in my judgment, our patent acts justify no such construction.

In respect to another point stated at the argument, I am of opinion, that a disclaimer, to be effectual for all intents and purposes, under the act of 1837, ch. 45, (§ 7 and § 9) must be filed in the patent office before the suit is brought. If filed during the pendency of the suit, the plaintiff will not be entitled to the benefit thereof in that suit; but if filed before the suit is brought, the plaintiff will be entitled to recover costs in such suit, if he should establish, at the trial, that a part of the invention, not disclaimed, had been infringed by the defendant. Where a disclaimer has been filed, either before or after the suit is brought, the plaintiff will not be entitled to the benefit thereof, if he has unreasonably neglected or delayed to enter the same at the patent office. But such an unreasonable neglect or delay will constitute a good defence and objection to the suit.

The cause was then continued on the motion of the plaintiffs.

District Court of the United States, Massachusetts, November, 1841, *at Boston.*

THOMPSON AND OTHERS *v.* SHIP OAKLAND.

Shipping articles described the voyage to be from Boston to one or more ports south, thence to one or more ports in Europe, and back to a port of discharge in the United States: *Held*, that the description was sufficiently certain to bind the parties to the performance of the voyage.

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[1] *Woodcock* v. *Parker*, 1 Gallis. R. 438.

A parol understanding that the vessel was not to complete the voyage described in the shipping articles, is not admissible.

Inability to obtain freight is not such a necessity as absolves the owner from his contract to perform the voyage described in the articles.

Where owners refused to perform the voyage to Europe, and the ship returned with the seamen on board to the home port, a sum equal to one month's wages was allowed to each seaman as compensation for the loss of the voyage to Europe.

THE facts in this case sufficiently appear in the opinion of the court, which was substantially as follows:

SPRAGUE J. The libellants were mariners on board the ship. The voyage, as described in the shipping articles, was "from Boston to one or more ports south, thence to one or more ports in Europe, and back to a port of discharge in the United States." They sailed from Boston on the 21st of June, and arrived in Hampton roads about the 3d of July. The captain proceeded to Petersburg, and endeavored to obtain freight for Europe. He also, by correspondence, made inquiries at Charleston, Savannah, and Mobile, but did not succeed in obtaining business. About the 7th of August the captain determined to return to Boston, and on that day the whole crew went aft and inquired of the captain whether he meant to get other men in the place of those (four or five in number) who had been discharged, from sickness. He replied, no; that, as the ship would return to Boston, he did not intend to procure other hands. They then asked for their discharge, saying they thought the articles broken by not going to Europe. The captain refused to discharge any of them, and declared that they should all return with him to Boston. They were then ordered by the mate to go to work, and they obeyed. On the next day (the 8th of August,) the ship sailed for Boston and arrived on the 14th. The crew were discharged the same day. The libellants were paid their wages, at the rates stipulated in the articles, up to the time of their discharge. They now claim compensation for the loss of the voyage to Europe, and for being refused their discharge at James river.

To this claim it is objected on the part of the respondents, —

First, that the articles are not obligatory, because it is said that the voyage is not sufficiently described; that there is no description of ports, no prescribed terminus, and no limitation of time. It is argued that the articles admit of any number of voyages between ports south, and then between ports in Europe. To this the libellants' counsel replies, that the fair understanding of the articles is, that the ports south shall be visited only for the purposes of the European voyage, and the ports in Europe only for the purposes of the home voyage. This, I think, is the true interpretation, and makes the voyage sufficiently definite to be obligatory upon the parties.

In *Brown* v. *Jones*, (2 Gall. 477,) cited for the libellants, the voyage described was "from the port of Boston to the Pacific, Indian

and Chinese oceans and elsewhere, on a trading voyage, and from thence to Boston." There no ports were designated, nor any time limited, yet it was held that the oceans must be visited in the order in which they were mentioned, and wages were decreed to the crew, who deserted the vessel at Canton, whence she was about to return to the north-west coast.

In the case of the *Saratoga*, (2 Gall. 164,) the voyage described was "from Boston to Amelia Island, at and from thence to port or ports in Europe, and at and from thence to her port of discharge in the United States." The suit was for wages, and was zealously defended by most eminent counsel, yet no question was made, either by counsel or by the court, of the sufficiency of the description of the voyage.

In the case of the *Crusader*, (Ware's R. 437,) which has been pressed upon the court by the counsel for the respondent, there were no written articles, and the vessel was to be employed in the coasting trade, from place to place, without any limitation of time or restriction of places. If this contract was obligatory, it would bind the libellant to perpetual service, at the will of the master; while, on the other hand, the master might terminate it at pleasure, by giving up the trade, and there was, therefore, no mutuality. On these grounds the court was of opinion, that the libellant might terminate the contract at any reasonable time and place. The difference between that case and the present is manifest.

The next ground taken in the defence is, that it is the usage of the port of Boston for ships which go south in search of freight for Europe to return, if freight cannot be obtained. Without pausing to inquire how far a usage of any port can vary the written articles so carefully prescribed by acts of congress, it is sufficient that no usage has been proved which can affect the present case. Respectable ship owners have testified that they have long been engaged in this trade, and that they know of constant instances of vessels returning when they fail of procuring freight, and that they never knew an instance of a claim for compensation for the loss of the voyage to Europe. They admitted, however, that the original crews very seldom returned in the vessels; and we have, moreover, no evidence that the articles did not, in those cases, provide for the return to Boston.

The next objection is, that there was, in this case, an understanding between the libellants and the owner that the vessel might return, and that some of the libellants received additional advance in consideration of this chance. This is not sufficiently proved, and even if the evidence of it were much stronger than it is, it would not be permitted to control the written articles. This would be inconsistent with well-established principles of law, and with the statutes of the United States, which have sought with much solicitude to give to seamen the protection of a written contract. (Act 1840, ch. 23, § 3.)

It is further contended, that the voyage was abandoned from ne-

cessity, because freight for Europe could not be obtained. It is replied on behalf of the libellants, that this is not the kind of necessity which will excuse the owner from performing his contract; that it must be *vis major*, or an inevitable, overpowering necessity, in the nature of a common calamity; while this is a mere contingency in trade, one very likely to occur, and which could have been foreseen and provided for in the contract. The only authority adduced for the respondents' view is a remark of Sir Christopher Robinson, in giving his opinion in the case of the *Cambridge*, (2 Hagg. 247,) in which he says that he finds in Sir Edward Simpson's notes, cases in which the necessity of going to St. Petersburg for a cargo, which the master had been disappointed in obtaining at Hamburgh, and detentions arising from the stress of weather, or the order of the government, have been held not to be deviations amounting to a breach of the mariners' contract, such as would entitle them to their discharge. The terms of the contract do not appear, and they are most material to be known, in order to understand a question of mere deviation, as that was; nor are we enlightened by any particulars of the case or reasons of the court. On the other hand, Sir John Nicholl states that very case of inability to obtain freight as not discharging the owner from his contract with the mariners; "a mariner, it is true, may be entitled to wages, even if no freight is earned, as when a vessel is sent out on a seeking voyage, in search of freight, and obtains none," the *Lady Durham*, (3 Hagg. 202). In the case of the *Mary*, (Paine C. C. R. 180,) the mariners shipped for a voyage from New York to New Orleans and back to New York or such other port as the ship might take freight for. Freight was earned to New Orleans, but the ship remained there a year without obtaining freight for any other port, and then the master discharged the seamen. It was contended, that, as the ship did not earn freight after her arrival at New Orleans, the crew were not entitled to wages; but the court gave them wages for the whole time the vessel lay at New Orleans, and up to the time of their return to New York.[1]

The only remaining question is the amount of compensation to be awarded. This is governed by no fixed rule. The court is to give as much as, under the circumstances of the case, it shall deem proper. There is nothing in the conduct of the owner that calls for exemplary damages. There has been no wanton violation of the contract, and the men have been brought to a home port and paid their wages to the time of their discharge. He has also made some offer of additional compensation. On the other hand, the conduct of the libellants has been exemplary. When their requests to be discharged were refused, they went quietly back to their work, and faithfully performed their duty until discharged.

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[1] In addition to 3 Hagg. 202, and Paine 180, the counsel for the libellant cited, to this point, 2 Gall. 164; Curtis's Merchant Seamen, 295, and 1 Hagg. 347.

In a case in which the voyage was broken up at the home port, Judge Peters allowed one month's pay in addition to the wages actually earned. What the voyage was, and where begun, is not stated, (*Wolf* v. *The Oder*, 2 Pet. Ad. 261). The same judge in *Hindman* v. *Shaw*, (2 Pet. Ad. 265,) says that in voyages broken up in the West Indies, or distant ports in the United States, he has given seamen one month's pay, although this has been sometimes refused.

On the whole, I am of opinion that the libellants are entitled to one month's pay each, as damages, and to the costs.

R. H. Dana, Jr. for the libellants.

Wm. Dehon for the respondents.

Rees *v.* Brig Planet.

Costs in Admiralty. Settlement with the libellant without the knowledge of his proctor.

The libellant, a boy of about nineteen years of age, shipped at St. John, N. B., his native place, for a voyage described in the articles as being from St. John to the West Indies, thence to Sydney, and thence to St. John. Instead of returning to St. John, however, the vessel came to Boston. On arriving here the boy demanded his discharge and wages; both which were refused him. The master also refused to give up his clothes. He then applied to the British consul, who refused to aid him, and told him he would be arrested as a deserter. (This was owing to a set of articles, different from those signed by the boy, and which included Boston in the voyage, having been left at the consul's office.) In this situation he applied to a counsellor, who immediately commenced admiralty process. As soon as the process was served, the master and agents sent for the boy, and without consulting or notifying the proctor, paid him his wages and took a receipt in full, but paid him nothing for costs. It appeared that the boy told them he should have little left from his wages after paying his costs. The question for the court was, whether process should go against the vessel for costs. The respondents produced the libellant's receipt in full, in defence.

Nutter, for the respondents, offered, in defence, the receipt in full of the sailor, and the testimony of the agent who paid him that at the time of settlement he agreed to pay all the costs which had accrued, himself; and it was contended, that, since no evidence appeared to impeach the fairness of the compromise, or to show that any advantage was taken of the seaman, the claimants were clearly not liable for the costs.

R. H. Dana for the libellant.

Sprague J. said, that the court of admiralty was, in a manner, the guardian of seamen. The proctor, especially in cases of seamen's wages, is an officer of the court; and the practice in admiralty has always been to allow process for costs, and sometimes even to allow a settlement to be opened and inquired into, if there is reason to believe the seaman has been designedly induced to settle, after service of process, without his proctor's knowledge. He has a disadvantage in dealing with the other party, and especially as to costs and other matters of law, is entitled to the aid of his proctor. In this case, the libellant, being a minor, was peculiarly under the protection of the court. He had also been brought on a voyage, contrary to his agreement, to a place in which he was an entire stranger; denied his legal right to a discharge and his wages; and, on applying to the consul, his proper protector, had been refused all aid (through a misapprehension on the consul's part, however;) and, as a last resort, applied to a lawyer. He was then clearly entitled to his costs as well as his wages; and obliging him to pay his own costs was, in fact, deducting so much from his wages. There might be cases of settlements made with a seaman, after service, without consulting his proctor, which would stand; but in this case there seemed good reason for enforcing the rule.

Decree for costs.

Supreme Judicial Court, Massachusetts, October Term, 1841, *at Worcester.*

Perry *v.* Adams.

A member of a manufacturing corporation may sue and recover judgment for his debt against the company and satisfy the same by levying upon the company's property, although he is personally liable for the debts of the company, and by reason of the levy of his own execution, other attaching creditors of the company are prevented from satisfying their debts out of the company's assets.

In levying executions, where simultaneous attachments have been made, an officer may properly seize the whole estate, but should only return a moiety (in case of two such executions) of the estate upon either of the executions.

Where a creditor of a corporation for whose debts the corporators were individually liable, levied upon a parcel of land both as the estate of the company and of one of the corporators, by two distinct levies and returns, it was held, that such levy upon the estate of the corporator was valid.

This was a writ of entry to recover possession of a parcel of land in Athol. The defendant disclaimed as to all but one undivided half of fifteen-sixteenths of the land, and to prove title to the remainder, offered in evidence a levy of an execution upon the premises, as the estate of Adin Holbrook, upon a judgment recovered against the Athol

Manufacturing Company, a corporation for whose debts its members were personally liable under the statute of 1808, chapter 65, the said Adin having been a member of the company. It appeared, that both demandant and tenant were creditors of said company, and that the said Adin was also a creditor of the company; that each had served out writs upon which the real estate of the company was attached, said Adin being first in order, and the demandants, the last. Judgments having been recovered in each of said three suits, said Adin and the demandant caused the estate in controversy to be seized on their executions, while such proceedings were had both upon the demandant's and tenant's executions, as to render the corporators liable in their individual capacities. The said Adin, having completed the levy of his execution and received seisin of the estate levied upon, the same was seized upon the demandant's and tenant's executions simultaneously by different officers. The tenant proceeded and levied his execution on one undivided half of the estate, and the demandant levied his upon the whole of the estate, as the estate of said Adin, and, at the same time, caused his execution to be levied upon the estate as the estate of the company which had become insolvent, and the whole of whose estate, except this parcel, had been levied upon to satisfy previous attachments. Both levies upon the demandant's execution were completed and seisin taken under each, simultaneously.

The demandant claimed to recover the estate on two grounds; *first*, that it was not competent for Adin Holbrook, who was a member of the company and personally liable for its debts, to appropriate the property of the company to satisfy his own private debt, and thereby preclude another creditor of the company from recovering his debt, any more than for one partner to apply partnership property to satisfy his own debt against the company, to the exclusion of a company creditor.

In the *second* place, he contended, that the tenant having made a simultaneous seizure with him as the property of Adin Holbrook, and having disclaimed as to one half of fifteen-sixteenths, he could only hold an undivided half of the half not so disclaimed.

The tenant contended, that, by the levy upon the estate as the property of the company, the execution of the demandant was *functus officii*, and that the levy upon it as the property of Holbrook was void.

The case was argued by *Washburn* and *Stevens* for the demandant; and by *Brooks* for the tenant.

The Court held, that the levy by Adin Holbrook was valid, because, the company being a corporation, it was as competent for any member of it as for a stranger to sue and attach its property, and that Holbrook's priority of lien by virtue of his attachment was not divested by anything that occurred in regard to the demandant's execution. If he were to be postponed, as contended for by the demandant, he

would be without remedy over upon the other members of the company for having thus indirectly paid one of the debts of the corporation.

In regard to the form of the levy upon the estate as the property of Holbrook, the demandant had contended, that each creditor should have levied upon the whole of the estate, and that the law would then give to each a moiety. But the court were of opinion, that the levy by the tenant upon one half was properly made. The officer did right in seizing the whole estate, but he proceeded correctly in levying upon such share only as the creditor was entitled to hold under his levy. *Durant* v. *Johnson*, (19 Pick. 544.)

In regard to the double levy made by the demandant, the court held, that if any objection existed to it the tenant could not take advantage of it in this suit, as he was not thereby disturbed in what he himself claimed. But there was in fact no objection to the sufficiency of the levy. It was not like a levy upon two distinct parcels of land, the creditor could not thereby receive but one satisfaction for his debt, he could derive title from only one of the two levies, and these having been made upon the same parcel of land, the title of the demandant to an undivided half of the estate was held to be valid.

Pierce *v.* Partridge.

If a creditor, knowingly, takes judgment for a larger sum than is due to him from the debtor, he will thereby vacate any attachment made upon the original writ, as against subsequent attaching creditors.

An officer holding a bond of indemnity from a party is regarded as standing in the place of such party.

It is not necessary that adverse claimants of money, in an officer's hands, should disclose to him the ground of their claims in order to hold him responsible for misapplying such moneys.

This was an action of the case against the defendant, a deputy sheriff, for having neglected to apply the proceeds of certain property attached and sold as belonging to the Athol Manufacturing Company, upon the plaintiff's execution against that company. It appeared that one Henry Holbrook, a member of said company, as well as the plaintiff, sued out writs against the company returnable at the June term of the court of common pleas for the county of Worcester. Each of them recovered judgment at the September term of the court, the actions having been continued at the return term. Before judgment had been recovered, Holbrook assigned his debt and action to A. B. After the recovery of their judgments, both the plaintiff and A. B. put their executions into the defendant's hands, with directions to levy them upon the same property, and each offered him a bond of indemnity for so doing. He accepted that of A. B., and levied his

execution upon the property, Holbrook's attachment upon mesne process having been made prior to that of the plaintiff.

One of the grounds on which the plaintiff rested his claim to recover was, that Holbrook, being a member of the company and personally liable for its debts, could not withdraw the company funds to satisfy his own debt, when he thereby prevented a creditor of the company from satisfying his debt. But this point was ruled against him by the court for the same reasons that were given in the case *Perry* v. *Adams*, (previous case, *ante* page 354.)

The second ground of the plaintiff's claim was, that Holbrook or his assignee, had taken judgment for a larger sum than he knew was due, and had thereby vacated his attachment as against subsequent attaching creditors.

Holbrook's judgment was for about $1800, embracing a note and the amount of an account for services. It was proved that he had received about $400 of the company, which was charged to him on their books, towards paying for his services, and that he so understood it when he received the items constituting the amount against him. It appeared also that, after commencing his suit and before it was entered, he showed to the officer a memorandum of the debts due from the company, in which his own was stated at about $1350 — (the difference between their indebtedness to him and their amount against him.) And when he assigned his debt in suit, he took a note from the assignee for a sum just equal to such balance, which recited, "it being for his demands against the Athol Manufacturing Company," though it did not appear that the assignee knew that the charges against Holbrook were received in part payment for his services.

The defendant objected, that if such a proceeding would vacate an attachment of a creditor, the plaintiff could not avail himself of it in this cause, because, when he demanded of the defendant that he should pay over the proceeds of the property to him, he did not disclose the grounds upon which his claim rested.

Washburn and *Stevens* for the plaintiff.

Allen for the defendant.

Dewey J. The attachment of Holbrook was vacated by his knowingly taking judgment for a larger sum than was due. Courts hold parties to great strictness in respect to the amounts for which they shall take judgment in cases like this, where the debtor suffers default. If a party sues a well defined claim, and sees fit to add to that claim before taking judgment upon it, he will thereby vitiate it altogether so far as after attaching creditors are concerned. Here it has been shown, that the judgment was for more than $400 more than the amount originally claimed by the creditor in his suit, and the facts disclosed bring the case within the principle of that of *Fairfield* v. *Baldwin*, (12 Pick. 388.)

As to the objection that these facts were not known to the assignee

of Holbrook, he must be regarded as having taken the suit charged with the consequences of the facts connected with its prosecution to final judgment. Nor can the objection prevail, that the particular grounds on which the plaintiff claimed to have the application of the money made upon his execution, were not disclosed to the officer. An officer holding a bond of indemnity from a party interested in the attachment of property made by such officer, is regarded as standing in the place of such party with no better rights in regard to the property so taken or held by him than the party himself would have.

Judgment was accordingly rendered for the plaintiff.

Howe *v.* George Bishop.

Where A. purchased lands with the money of B. and took a deed running to himself for the purpose of keeping the estate from B.'s creditors, it was held, that a creditor of B. could not levy upon the estate and hold it against A.

This was a writ of entry. The demandant claimed under a levy of an execution upon the demanded premises as the estate of Harrison Bishop, who was in possession of the estate when the levy was made. The defendant offered, as evidence of his title, a deed from one L. to him, and that Harrison was occupying the same under a lease from him at the time of the levy. The demandant alledged and offered to show, that the purchase from L. by defendant, was made with the money of Harrison and for his benefit, and that the deed was taken in the name of George to keep the estate from the creditors of Harrison, who was insolvent, and contended that the lease and contract, as to holding under George, was fraudulent as to creditors.

Washburn for the demandant.

Allen for the tenant.

The Court held, that the demandant could not recover. He must show a sufficient legal title, and has endeavored to do so by claiming to hold the premises under the possession which Harrison had at the time of the levy. This might be sufficient, if Harrison had claimed to hold independent of another, but the act of seising Harrison's possession could not affect the possession or title of another. According to the facts in the case there was no legal estate in Harrison, to be required by the demandant's levy. The case of *Goodwin* v. *Hubbard*, (15 M. R. 210,) was much relied upon by demandant's counsel as sustaining the principle on which he rests his case. But the question then presented itself in a somewhat different aspect — the situation of the parties was exactly the reverse of that of the parties in

the present action. The court do not mean to express any opinion upon the correctness of the decision in that case. They only remark that it turned upon the want of title in the plaintiff, and not a defeat of title in the tenant. *Kempton* v. *Cooke*, (4 Pick. 306.)

In the case under consideration, the one claiming to hold under the alleged fraudulent conveyance, is actually in possession, and can only be disturbed by one having a better title; so that the demandant, if he did acquire whatever possession Harrison had, cannot avail himself of that against the tenant in possession. Whether the demandant is without remedy in recovering his debt of Harrison under these facts, or in what form, if any, he is to recover it, the court decline expressing any opinion.

Wood and others v. Bard.

A receipt given by an heir or distributee to an administrator, even though expressed to be in full for his share out of an intestate estate, is no bar to requiring such administrator to render and settle an account in the probate court. The validity, or effect of such receipt, can only be tried upon an issue growing out of a suit by such distributee to recover his share of the estate which shall have been decreed to him by the judge of probate.

In this case Bard was cited before the judge of probate to settle his account as administrator of the estate of David Wood, father of the complainants. He appeared and rendered his account, in which he charged himself with a balance of $421 — but upon the hearing before the judge he was charged with a balance of $1497, from which decree he appealed. At the hearing at *nisi prius*, before Wilde J., the respondent objected to being held to account because he held receipts from the several heirs of the intestate or their assignees, six in number, purporting to be for the sum of fifty dollars each "in full for their portions of the estate." The complainants, two of the heirs at law, objected to the validity of these receipts, and insisted, that the administrator, even if they were genuine, was bound to settle the account of his administration in the probate office. The judge reserved the question for the whole court whether the respondent should be held to account further, notwithstanding the production of these receipts.

Washburn for the complainants.

Wood for the respondent.

Shaw C. J. delivered the opinion of the court. The respondent contends, that these receipts shall have the effect of estoppels to his being held to settle any further accounts. But it appears to the court, that such a claim, if allowed, would interfere with the law in relation to the settlement of estates of deceased persons, which is rather a process *in rem* than one between adverse parties. The jurisdiction of

this matter is peculiar to the probate court. By law an administrator is bound to render an account, in that court, within one year after taking letters of administration, and from time to time, after that, as he shall be required. But the administrator here contends that he ought not to be held to comply with this provision of law, because he holds receipts for a certain sum of money. The effect of adopting such a principle would be that the parties in interest would lose the benefit of the administrator's oath as to facts within his knowledge, for if the receipt were regarded as a bar, he could not be held to submit to any examination under oath. If regarded as a bar, the question might be raised, whether the receipt is or is not genuine or valid, and a difficulty would at once arise in what manner that question could be tried in a probate court, where questions are ordinarily settled without a jury and always must be, when tried by a judge of probate. The trial of such a question, too, might involve the rights of third parties, which a court of probate may not be competent to settle ; as in this case one of these receipts purports to be made by a person claiming to be the assignee of one of the distributees and heirs to this estate. No greater effect can be given to these receipts because they purport to be "in full," than if they had been for merely a certain sum, for a receipt is never regarded as conclusive between the parties. The respondent must go on and render and settle his account, and upon this the judge will decree to each distributee his share, and the question as to the validity or effect of these receipts, can be tried when he shall be called on by the distributees for the respective amounts decreed to be paid them. It is upon his settlement with distributees that an administrator may avail himself of receipts given by them for portions of their shares which he may have advanced to them pending the settlement of an estate. Another objection exists against the respondent's availing himself of these recepts in this stage of the proceedings, which is, that he did render and settle an account in the court below without having produced them, and it is not competent for him after that, to appeal, as appears by one of the reasons filed by him, because the judge of probate held him liable to account.

Supreme Court of Pennsylvania, July Term, 1841.

Anonymous.

[The *name* of this case was accidentally omitted by the learned judge who sent us the report.]

Equity refuses to execute a contract which is not mutual as regards obligation and remedy.

Under the Pennsylvania statute of frauds, which does not require a written memorandum of the bargain to have been signed by the party to be charged, an action to enforce a verbal sale of land by recovery of the purchase money, cannot be maintained, though such action is, by the practice of that state, a substitute for a bill in equity.

DIGEST OF ENGLISH CASES.

Selections from 9 Dowling's Practice Cases, part 4; 1 Gale & Davison (in continuation of Perry & Davison), part 1; 7 Meeson & Welsby, parts 3 and 4; 8 Meeson & Welsby, part 1; 4 Perry & Davison, part 2.

ARBITRATION.

1. An arbitrator to whom a cause was referred, the costs to abide the event, disposed of each of the issues, and then, (although no power was given to him for that purpose,) awarded a stet processus: *Held*, that although this was an excess of authority, the award was only bad as to that part, and good as to the rest, and the parties might proceed to tax their costs upon it. *Ward* v. *Hall*, 9 D. P. C. 610.

2. The court refused to set aside an award, on the ground that the arbitrators had improperly received evidence in the defendant's absence, and had been guilty of improper conduct in holding meetings, and conferring with the plaintiff's attorney upon the matters in difference, in the defendant's absence, as it appeared that the defendant was aware of the existence of these irregularities many days before the award was made, but made no objection before the arbitrators, and had notice of the meetings at which the evidence was received, and had been summoned to produce documents at such meetings, but had omitted to attend. *Bignall* v. *Gale*, 9 D. P. C. 631.

BASTARD.

A woman who was married in 1812, in 1818, her husband being alive, went through the form of marriage with another man, with whom she cohabited till 1832: *Held*, that the quarter sessions, in 1840 (the husband being still alive) were not justified in finding, upon these facts alone, and without any evidence of the non-access of the husband, that her child, born in 1821, was illegitimate. *Reg.* v. *Inhabitants of Mansfield*, 1 G. & D. 7.

BILLS AND NOTES.

1. An instrument was in the following terms: "I undertake to pay to R. I. the sum of 6*l.* 4*s.* for a suit of, ordered by D. P.:" *Held*, that it was not a promissory note, but good as a guarantee, as the consideration could be collected by necessary inference from the instrument itself. *Jarvis* v. *Wilkins*, 7 M. & W. 410.

2. A bill of exchange having been drawn upon A. B., was accepted by him, and was afterwards indorsed by the drawer to the plaintiffs, who indorsed it to the Birmingham and Midland Counties' Bank, who indorsed it to one W. The bill having been dishonored when due, W. gave notice of it to the bank, who gave notice to the plaintiffs, one of whom wrote the following letter to the drawer: "Dear Sir. To my surprise I have received an intimation from the Birmingham and Midland Counties' Bank, that your draft on A. B. is dishonored, and I have requested them to proceed on the same:" *Held*, that if there was more than one bill to which the letter could apply, it lay upon the defendant to prove that fact, in order to show its uncertainty. *Held*, also, that the letter was a good notice of dishonor. *Shelton* v. *Braithwaite*, 7 M. & W. 436.

3. In an action by the indorsee against the drawer of a bill of exchange, it is enough for the plaintiff to show, to the satisfaction of the jury, that the letter containing the notice of dishonor was posted in such time as that, by the

due and usual course of the post, it would be delivered on the proper day. The post-office mark is not conclusive of the time when the letter is posted. *Stocken* v. *Collin*, 7 M. & W. 515.

4. In an action on a bill of exchange, alleged in the declaration to have been indorsed by M. to the plaintiff; the defendant pleaded, that the bill was drawn and accepted without value, and that there never was any consideration for indorsing the bill by any of the parties, nor for the indorsement by M., nor for M. paying the amount. Replication, that the indorsement by M. was in blank, and that R., who appeared to be, and whom plaintiff believed to be, the lawful holder, of the bill, indorsed it to the plaintiff for value, to wit, &c. Special demurrer, for want of a statement of consideration for the drawing and accepting of the bill, and for departure, as to the allegation of the indorsement to the plaintiff: *Held*, that the replication was good, as the plaintiff, against whom there was no allegation of fraud, sufficiently established his own title by alleging an indorsement to him for value by a person whom he believed to be the lawful holder of the bill. *Ashbourn* v. *Anderson*, 9 D. P. C. 595.

DEBTOR AND CREDITOR.

By the release of a debt, by a composition deed, the creditor loses also the right to retain a written instrument deposited with him by the debtor as a security for the debt. Therefore, the relinquishment of such security, for the benefit of the debtor, forms no consideration for a parol promise by the debtor to pay the residue of the debt, beyond the amount of the composition received under the deed. *Cowper* v. *Green*, 7 M. & W. 633.

DEVISE.

On a devise to M. B., widow, for life, and her three daughters, Mary, Elizabeth, and Ann, in fee, an illegitimate daughter, named Elizabeth, claimed as being the only Elizabeth answering the description at the time of the will being made, a legitimate daughter Elizabeth having been dead six years previously: *Held*, that parol evidence was admissible to show that the testator intended his legitimate daughter as devisee, and that he did not know of her death. *Doe* d. *Thomas* v. *Beynon*, 4 P. & D. 193.

EVIDENCE.

1. Letters more than thirty years old, produced from the proper custody, prove themselves. The defendant produced letters thirty years old, purporting to be addressed to her mother, and proved that she was living with her mother at the time of her death, when her papers and keys were given up to her: *Held*, that the custody was proper. *Doe* d. *Thomas* v. *Beynon*, 4 P. & D. 193.

2. Where a deed purported to convey a messuage with the appurtenances, purchased at an auction, it was *held* that neither the conditions of sale at the auction, signed by the purchaser, nor his own declarations as to the extent of his purchase, were admissible in evidence, to show that a garden which had been usually enjoyed with the messuages was expressly excepted from the sale. (2 Saund. 401; 1 Bos. & P. 53; 4 Ad. & E. 76). *Doe* d. *Norton* v. *Webster*, 4 P. & D. 270.

3. Where a sold note expressed "18 pockets of hops at 100*s*.," held that parol evidence was admissible to show that the 100*s*. meant the price per cwt. (3 Campb. 426). *Spicer* v. *Cooper*, 1 G. & D. 52.

4. Where a witness, called to prove the signature of the attesting witness to a bond, swore that the signature was not in the supposed attesting witness's handwriting, another paper (not in evidence in the cause) was put into his hand, which he also stated was not that person's writing: *Held*, that the plaintiff was not at liberty to prove, for the purpose of contradicting the witness in the box, that this paper was actually written by the attesting witness to the bond. (11 Ad. & E. 322.) *Hughes* v. *Rogers*, 8 M. & W. 123.

LARCENY.

A person purchased, at a public auction, a bureau, in which he afterwards discovered, in a secret drawer, a purse containing money, which he appropriated to his own use. At the time of the sale, no person knew that the bureau contained anything whatever: *Held*, that if the buyer had express notice that the bureau alone, and not its contents, if any, was sold to him; or if he had no reason to believe that anything more

than the bureau itself was sold, the abstraction of the money was a felonious taking, and he was guilty of larceny in appropriating it to his own use. But that if he had reasonable ground for believing that he bought the bureau, with its contents, if any, he had a colorable right to the property, and it was no larceny. (2 East, P. C. 664; 8 Ves. 405). *Merry* v. *Green*, 7 M. & W. 623.

MINING COMPANY.

The resident agent, appointed by the directors of a mining company to manage the mine, has not an implied authority from the share-holders of the company to borrow money upon their credit, in order to pay arrears of wages due to the laborers in the mine, who have obtained warrants of distress upon the materials belonging to the mine, for the satisfaction of such arrears, nor in any other case of necessity, however pressing. *Hawtayne* v. *Bourne*, 7 M. & W. 597.

PRINCIPAL AND AGENT.

A club was formed, by the regulations of which the members paid entrance-money and an annual subscription, and cash was paid for provisions supplied to the house. The funds of the club were deposited at a banker's, and a committee was appointed to manage the affairs of the club, and to administer the funds, but no member of the committee had authority to draw cheques, except three who were chosen for that purpose, and whose signatures were countersigned by the secretary: *Held*, in an action brought against two of the committee by a tradesman who had supplied wine on credit, ordered by a member of the committee for the use of the club, that the tradesman was not entitled to recover without proving either that the defendants were privy to the contract, or that the dealing on credit was in furtherance of the common object and purposes of the club. *Todd* v. *Emly*, 7 M. &. W. 427.

SHIP.

Where A., the charterer of a vessel, by the charter-party agreed that on the arrival of the ship at the outward port, he would, through his agent there, supply cash to the master for the disbursements of the vessel, to be repaid by bills to be drawn by the master on the owner; and on the arrival of the vessel there, the agent supplied goods for the use of the crew, and paid certain money demands made on the master, but did not advance any actual cash: *Held*, that although it was not shown that any bills were drawn by the master for the amount, A. might recover it from the owner in an action for goods sold and delivered and for money paid, the master having authority to obtain supplies of goods and money for the necessary use of the ship on the credit of the owner, independently of the express stipulation of the charter-party. *Weston* v. *Wright*, 7 M. & W. 396.

SLANDER.

Slander for speaking of the plaintiff the following words: "I will bet 5*l.* to 1*l.* that Mr. J. (the plaintiff) was in a sponging-house for debt within the last fortnight, and I can produce the man who locked him up; the man told me so himself." And in answer to the following question from a bystander, "Do you mean to say, that M. J., brewer, of Rosehill, has been to a sponging-house within this last fortnight for debt?" the defendant said, "Yes, I do." The jury found that the words were spoken of the plaintiff in the way of his trade: *Held*, that the action was maintainable, and that the verdict was right, as it was plain from the conversation that the words were spoken of the plaintiff in his character of a brewer. *Semble*, also, that the words were actionable independently of that, because they must necessarily affect the plaintiff in his trade and credit. *Jones* v. *Littler*, 7 M. & W. 423.

USE AND OCCUPATION.

Where an upper floor of a house was occupied at a rent payable quarterly, and during the currency of a quarter the house was burnt and rendered uninhabitable, it was held that the landlord was nevertheless entitled to recover, in an action for use and occupation, *at least* the amount of rent for the occupation up to the time of the fire from the quarter-day preceding. *Packer* v. *Gibbons*, 1 G. & D. 10.

INTELLIGENCE AND MISCELLANY.

JUDICIAL CHANGES IN MAINE. The people of Maine, not contented with the slow process which the constitution provided for making changes in the judicial office, adopted, in 1839, a resolution proposed by the legislature to reduce the tenure from "good behavior, not exceeding the age of seventy years," to the narrow term of *seven* years. By the operation of this amendment, the period of two of the judges of the Supreme Court, viz.: Chief Justice Weston and Justice Emery, expired in October last, and their places have been supplied by Ezekiel Whitman, of Portland, as Chief Justice, and John S. Tenney, of Norridgewock, as an Associate Justice.

On the organization of the court in 1820, the late Chief Justice Mellen was placed at its head, and Mr. Weston, and William P. Preble were appointed associates. In October 1834, Mr. Mellen having reached the age of seventy years, when he was constitutionally disqualified, retired from the bench, and was succeeded by Mr. Weston as chief; Nicholas Emery, Esq., was raised to the vacant place. Judge Preble had previously resigned his seat, on his appointment as minister to the Hague in 1829, and Albion K. Parris, who had formerly been governor of the state and senator in congress, was appointed his successor. In 1836, he also, yielding to stronger influences, resigned this situation on receiving the appointment of second comptroller of the treasury of the general government, and Ether Shepley, then a member of the United States Senate, was appointed his successor on the bench. The court now consists of Ezekiel Whitman, chief justice, Ether Shepley and John S. Tenney, associates, each with a salary of $1800.

These gentlemen are all natives of Massachusetts. Mr. Whitman was born in Bridgewater, in 1776, and was educated at Brown University. He pursued his legal studies with the Hon. Nahum Mitchell, in his native town, and after making a tour of business and observation in the then uncultivated and thinly peopled regions of the west, he came to Maine in 1799. After remaining about six months in Turner, where he first pitched his tent, he established himself in New Gloucester, in the county of Cumberland, and enjoyed there a very extensive practice until 1806, when he removed to Portland, the shire town of the county, and commercial capital of Maine.

Mr. Mellen came to Portland the same year, and it is not claiming more than was awarded to it from competent and disinterested sources, to say, that the bar of Cumberland, at that day, was among the first, if not *the* first in the state. It contained Mellen, Whitman, Symmes, Longfellow, Orr, Hopkins; Chase had just died, Emery soon joined it, and Greenleaf and the elder Fessenden were entering upon their successful and honorable career.

Mr. Whitman shared largely in the business and confidence of the people with whom he had now connected himself. In 1808 he was elected to represent the district in Congress, but in consequence of political changes, his re-election for the subsequent term was defeated. In 1815 and 1816, he was chosen a member of the executive council of Massachusetts; and in the latter year he was again elected a representative to Congress. The duties of this office he continued to discharge, by repeated election, with great fidelity and honor to his constituents and himself, until his resignation in 1822, on receiving

the appointment of chief justice of the court of common pleas, then just established in the new state. While a representative in congress in 1819, he was chosen a member of the convention which formed the constitution of the state, and took an active and influential part in its laborious and important duties. He continued to occupy the situation of chief justice of the common pleas, until the court was modified by the introduction of the district system in 1839, when he received the appointment of judge of the western district, embracing the counties of York, Cumberland, Oxford and Franklin. He is now elevated to the highest judicial office in the state, with the general approbation of the bar and the public, and is commended to this honorable position by long and faithful services, sound legal judgment, clear and penetrating discrimination, and uncompromising integrity.

Judge Shepley is a native of Worcester county, in Massachusetts; he was graduated at Dartmouth college in 1811, and soon after his admission to the bar, established himself at Saco, in Maine, where he continued pursuing a very successful business until his appointment as judge. In 1820, on the promotion of Judge Preble, then district attorney of the United States for Maine, to the bench, he was selected by President Monroe for that office, and held it till his election to the senate of the United States in 1833. In 1836 he received the appointment of judge, the duties of which he has continued to discharge with ability and acceptance to the present time.

Judge Tenney was born in Essex county, in 1796, and was graduated at Bowdoin college, with the highest honors of his class, in 1816. He pursued his professional studies partly with Mr. Bond, of Hallowell, and partly with Mr. Boutelle, of Waterville. Since his admission to the bar he has resided at Norridgewock, and has taken the lead in that county for several years in the business of the courts. The specimen he has given, since his appointment, of good sense, judicial manner, and legal sagacity, has fully justified the discrimination which selected him for his present high and responsible station.

In conclusion, we have pleasure in believing and affirming that this court will take a high and honorable position among the judicial tribunals of our country. Learning integrity, dignity of manners, and public confidence, ensure to it, honor, to the public, security, and to its decrees, respect.

Mr. Goodenow, who has succeeded Judge Whitman on the bench of the district court, is a graduate of Dartmouth, of the year '13 or '14. He is a native of Maine, studied his profession with the Hon. John Holmes, at Alfred, and has ever since remained in practice in that place. He has the reputation of being a sound lawyer, a good advocate, and an honest man; he has been a representative to the legislature, speaker of the house, and, at two different periods, attorney general of the state. He brings to the office a well-furnished and well-regulated mind, and will undoubtedly discharge the duties of his office with ability and honor.

Chief Justice Weston. For the foregoing interesting account of the recent judicial changes in Maine, we are indebted to our attentive correspondent at Portland. There are some other facts which have come to our notice, which, we think, are deserving of attention. The first nominations made by Governor Kent, for the vacant places on the bench, were the Hon. Nathan Weston, as chief justice, and John S. Tenney, as associate justice. The nomination of the latter was confirmed by the council, but that of the former was *rejected*, there being but one vote in its favor. Mr. Weston was a justice of the court many years, and, in that situation, was a popular magistrate. He was appointed chief justice on the retirement of the late chief justice Mellen. It is no secret, that, for a few years past, Mr. Weston has not been a very acceptable judge, especially with the bar in the eastern part of the state. His nomination by Governor Kent was undoubtedly an unpopular act. The causes of this state of things are variously stated, but we do not propose to discuss them. There have, however, been some statements in the newspapers since his rejection by the council, to which we feel at liberty to refer. One is, that Mr. Weston, at the

time of the alteration of the constitution, limiting the judicial term to seven years, proposed to Governor Fairfield to resign his office, in order that he might be reappointed, and thus have his term of seven years commence from that time. It is said, that Governor Fairfield declined to accede to the proposition.

Another statement which we find in the Waldo Signal, newspaper, is, that Mr. Weston, after his rejection by the council, and before any new nomination was made, went before that body and argued his case for the space of three hours, expressing strong hopes that his nomination would yet be confirmed! This is the statement of a partisan press, opposed in politics to Mr. Weston, and should be received with caution. But if it be true, it is a powerful commentary on the whole system of judicial and other appointments at the present day. Lord Mansfield loved that popularity which *followed*, not that which was run after; and formerly, in this country, at least in New England, high judicial appointments sought those individuals who were best fitted for the stations. At the present day there is scarcely a vacancy in the judiciary, for which there is not a list of *applicants*, for whom every sort of interest is made, directly and indirectly; but such efforts are expected to be secret. The opinions and feelings of men on this subject are not dissimilar to those of the Italians on female chastity. Every married lady is expected to have her lover, but the outward proprieties of life must be strictly observed. The lover may live in the house of his mistress, under such circumstances as leave no doubt of crime, and the laws of fashionable society are not offended in the least; but if the wife desert her husband and live with her lover, she immediately loses *caste*. Adultery is nothing, but separation and divorce are terrible crimes. The only difference between the course taken by Mr. Weston and many others, is, that he preferred the frank and open course of arguing his own case to the more secret measures which are often adopted by candidates for office. Perhaps he tried both! But the moral is no less instructive, and those who are indignant at his conduct would do well to point out the real difference between secret and open *supplications* for judicial appointments.

Lord Chancellor of Ireland. The mutations in this office, consequent upon political changes, are somewhat curious. Sir Edward Sugden held the place during the short-lived administration of Sir Robert Peel in 1835, by which he necessarily sacrificed his position at the head of the English chancery bar. In one hundred days the triumphant return to power of Lord Melbourne brought back Plunckett as Lord Chancellor of Ireland, and Sir Edward Sugden, having once sustained the dignity of judge, could not, consistently with the long established usage in England, again descend into the arena of the bar Of late years he has been known to the public only as a powerful and influential tory politician. Recently Sir John Campbell, the whig attorney general since 1834, (with the exception of Peel's short administration.) was appointed Chancellor of Ireland. He held the office but a short time, for, upon the return of Peel to power in 1841, Sir Edward Sugden is again Chancellor of Ireland, and Sir John Campbell is Lord Campbell, with a peerage to spare, which he would doubtless be quite glad to exchange for a pension. He must retire from the bench and the bar, and "bide his time."

Dublin Law Institute. We have before us the first report of the Dublin Law Institute on the progress of legal education in Ireland, and several other papers having reference to this institution and the objects for which it was founded. The institute was commenced more than a year ago, and bids fair to prove highly beneficial to the legal profession of Ireland. It started under high auspices, the attorney and solicitor general, among other distinguished members of the Irish bar, being on the council. The principal of the institute is Tristram Kennedy, Esq., and there are five professors. The

equity department is filled by Echlin Molyneux, Esq.; that of the law of property and conveyancing by James J. Hardy, Esq.; that of common law by Joseph Napier, Esq., and that of medical jurisprudence by Thomas Brady, M. D. We have seen a letter, addressed to the Royall professor of law at Cambridge, on the part of the institute, with a statement, that any literary or scientific contributions emanating from any of the law professors in Harvard University, calculated to interest those engaged in legal pursuits or to promote the common objects of both institutions — the advancement of the science of the law — will be received with thanks, and read with much gratification by the fellows and associates of the institute at their general meetings.

London Police. We find the following curious report in a late London paper: — Joseph Jones, a tailor, about twenty-five years of age, with a profusion of hair combed down in long, straight locks, was brought before Sir Peter Laurie, at Guildhall, charged with being drunk and disorderly in Fleet street. A policeman stated that the prisoner assaulted several persons by striking them over the head with a blue bag, containing a pair of trowsers. He struck women as well as men, and drew blood from the noses of some. Sir Peter Laurie was not surprised that he was charged with striking females, for he took persons who wore their hair in that manner to be capable of doing anything. Nothing could make a man look more contemptible than this womanish fashion of letting the hair grow till it reached the shoulders. He supposed the prisoner wished to be mistaken for a German student. The prisoner, in excuse for his conduct, said he was rather fresh. Sir Peter Laurie said he would fine him five shillings for being tipsy, but if he would cut off his hair he would forgive him. The prisoner bowed, stepped down from the bar, and immediately sent for a barber, who speedily performed the operation of cropping. The jailer then put the prisoner to the bar to show that he had brought himself within the allowed exemption from fine. Sir Peter Laurie told the prisoner he now looked much better and more like a man. The tailor, who enjoyed the fun as much as any body in the room, was then discharged. The worthy alderman paid for the man's hair cutting out of his own pocket.

Story on Partnership. This long expected work is at length published in Boston by Messrs. Little & Brown. It makes an elegant royal octavo volume of 711 pages. It is dedicated to the Hon. Samuel Putnam, LL. D., one of the justices of the supreme judicial court of Massachusetts, in whose office the learned author was a pupil in the close of his preparatory studies for the bar. The contents of the volume are as follow: Chap. I. Partnership — What constitutes. II. Who may be Partners. III. Partnership between the Parties — Community of Interests. IV. Partnership as to Third Persons. V. Partnership — Different sorts of. VI. Rights and Interests of Partners in Partnership Property. VII. Powers and Authorities of Partners. VIII. Liabilities and Exemptions of Partners as to Third Persons. IX. Rights, Duties, and Obligations of Partners between themselves. X. Rights, Duties, and Obligations of Partners under the articles thereof. XI. Remedies between Partners. XII. Remedies of Partners against Third Persons. XIII. Dissolution of Partnership, when and how it may be. XIV. Effects and Consequences of a Dissolution, as between the Partners. XV. Effects and Consequences of a Dissolution as to the Rights of Creditors. XVI. Part Owners of Chattels — Rights, Powers, and Liabilities of. Index. In the course of this work more than nine hundred decisions in the different reports have been cited.

Insanity of a Witness. In one of the inferior Boston courts, a witness was recently called to testify, who is a man of respectability, and whose sanity would never be doubted by those who merely transact business with him; but it is nevertheless true, that he supposes himself to be the prophet Elijah. The party who called him was not aware of this fact, and, after the witness had testified, rested his cause with great confidence. To his astonishment and the amusement of the audience, the opposite counsel asked the following question; "Mr. Witness, are you the prophet Elijah?" And the surprise of all parties was equally great at the prompt reply of the witness; "To be sure I am!" After a long examination, the witness remained firm on this point, and the defendant lost his cause. He took an appeal, however, contending that a witness who is perfectly sane on all points but one, is competent to testify to any facts not relating to the particular subject upon which he is insane.

MONTHLY LIST OF INSOLVENTS.

Abington.	
Ramsdell, Martin	Gentleman.
Boston.	
Burgess, Isaac	
Demerritt, Albert C.	Merchant.
Foster, Isaac	Stable keeper
Goodwin, Elisha, Jr.	Truckman.
McLoud, John	Laborer.
Munroe, Charles A.	Jeweller.
Paul, Rufus	Merchant.
Peyton William H.	
Stearns, Charles J.	Merchant.
Wells, Thomas G.	Printer.
(Folsom, Wells & Thurston.)	
Charlestown.	
Bridge, James	Trader.
Sanborn, Noah	Trader.
East Bridgewater.	
Keen, William W.	Shoemaker.
Gloucester.	
Griffin, Gustavus	Trader
Haskell, George	Yeoman.
Hanson.	
Howard, Cheleias	Yeoman.
Lynn	
McIntire, Benjamin	Housewright.
Malden.	
Lynde, George	Cordwainer.
Medford.	
Coates, John H.	Carpenter.
Montgomery.	
O'Neil, Michael.	
Nantucket.	
Parker, Robert F.	Merchant.
New Bedford.	
Robinson, Thomas T.	
Winslow, Job C.	
Wilbur, George R.	
Oakham.	
Harwood, Harrison	Trader.
Pembroke.	
Ramsdell, Bartlett	Gentleman.
Taunton.	
Crocker, Samuel }	Esquires.
Richmond, Charles }	Copartners,
Templeton.	
Merritt, Dexter P.	Chairmaker.
Townsend.	
Barrett, Oliver }	Manufactur's.
Barrett, Oliver S. }	Copartners.
Barrett, John O. }	
Tyringham.	
Stevens, Moses	Yeoman.
Worcester.	
Bryant, Morgan M.	Confectioner.
Collier, Jason	Shoe dealer.

COLLECTANEA.

A work has been published in New York, entitled, "An Alphabetical List of Attorneys and Counsellors," from which it appears that the number of practising lawyers in that state is 2012. In the city of New York there are 893 — enough to form a full regiment in the United States army. The number of lawyers in the whole state is undoubtedly estimated too low There are probably more than 4000. A writer in the New York American says it would be a curious and useful inquiry to ascertain the actual amount of profits received and realized by the larger half of these learned practitioners. He is inclined to think that many of them would have enjoyed more comforts, a more certain income, and less of the mortifications of this life, if their good fathers had brought them up to their own trades instead of thrusting them, without classical or other necessary acquirements, into a profession in which it is next to impossible that they can ever rise above mediocrity.

In the legislature of South Carolina, Mr. Dudley, one of the members, recently introduced a resolution impeaching Judge R. S. Gnatt, of incompetency to discharge his duties Subsequently the judge sent into the House his resignation of the office which he had held for twenty-six years; whereupon the house immediately passed resolutions expressive of their h gh appreciation of his motives, and appropriating to him another year's salary of $3500. It is said that intemperance is the cause of Mr. Gnatt's incompetency. Hon. D. L. Wardlow has been elected to fill the vacancy.

Charles Sumner, Esq., the accomplished reporter of the circuit court of the United States for the first circuit, has resigned his office, and William W. Story, Esq., son of Mr. Justice Story, has been appointed in his place. Mr. Story is now engaged in preparing his first volume of reports for the press.

The second American edition of Beames's "Brief View of the Writ of Ne Exeat," has been published in New York by Collins, Keese & Co., with notes by Henry Nicholl, counsellor in chancery.